

**DESERT TORTOISE COUNCIL**

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**Via email only**

Date: 14 June 2024

To: Mr. Jon Braginton, Planner  
County of San Bernardino, Land Use Services Department  
Attn: Jon Braginton, Planner  
385 North Arrowhead Avenue, First Floor San Bernardino, CA 92415  
Email: [Jon.Braginton@lus.sbcounty.gov](mailto:Jon.Braginton@lus.sbcounty.gov)

Re: Notice of Preparation (NOP) for an Environmental Impact Report for Electric Vehicle Charging Station and Logistics Facility in Lenwood, San Bernardino Co, CA (APNs 049-714-203; 049-714-204; 049-714-214; and 049-714-215)

Dear Mr. Braginton,

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer to receive emails for future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail."

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), "... based on population reduction (decreasing density), habitat loss of over 80% over three generations (90 years), including past reductions and predicted future declines, as well as the effects of disease (upper respiratory tract disease/mycoplasmosis). *Gopherus agassizii* (sensu stricto) comprises tortoises in

the most well-studied 30% of the larger range; this portion of the original range has seen the most human impacts and is where the largest past population losses have been documented. A recent rigorous rangewide population reassessment of *G. agassizii* (sensu stricto) has demonstrated continued adult population and density declines of about 90% over three generations (two in the past and one ongoing) in four of the five *G. agassizii* recovery units and inadequate recruitment with decreasing percentages of juveniles in all five recovery units.”

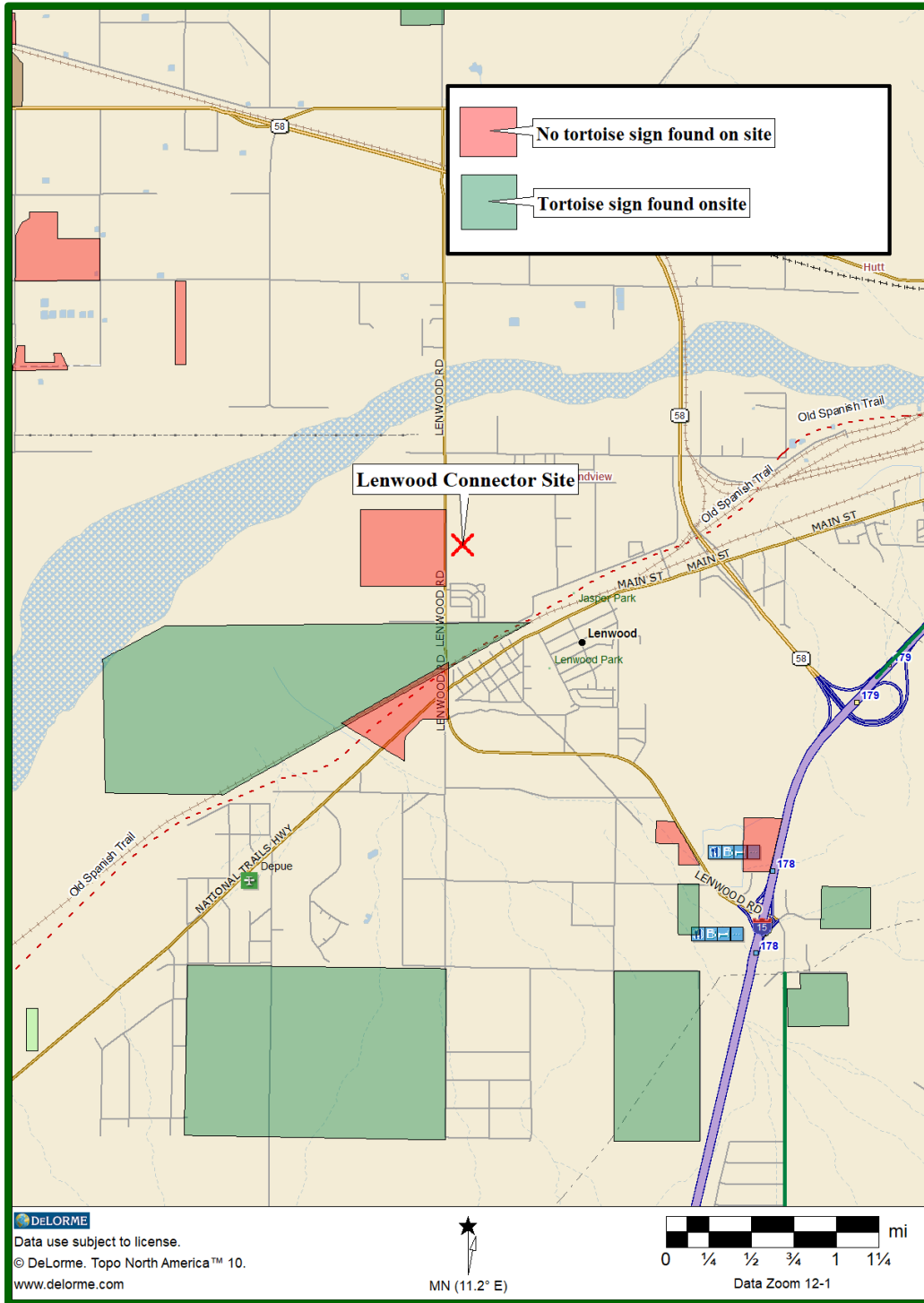
This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from Threatened to Endangered in California. In its status review, California Department of Fish and Wildlife (CDFW) (2024a) stated: “At its public meeting on October 14, 2020, the Commission considered the petition, and based in part on the Department’s [CDFW] petition evaluation and recommendation, found sufficient information exists to indicate the petitioned action may be warranted and accepted the petition for consideration. The Commission’s decision initiated this status review to inform the Commission’s decision on whether the change in status is warranted.”

Importantly, in their April 2024 meeting, the California Fish and Game Commission voted unanimously to uplist the tortoise from threatened to endangered under the California Endangered Species Act based on the scientific data provided on the species’ status, declining trend, numerous threats, and lack of effective recovery implementation and land management.

The following project description is given in the County’s notice of preparation, dated May 2024: “The project site is located in unincorporated San Bernardino County, California, within the City of Barstow Sphere of Influence. The site is located on Lenwood Road approximately 2.4 miles northwest of Interstate 15 (I-15), 1.15 miles southwest of State Route 58, and approximately 6 miles west of I-40 (Figure 1, Project Location). The project site consists of four vacant and undeveloped parcels (Figure 2, Project Area). The project site is bordered to the south by the existing High Desert Estates subdivision, to the east and west by undeveloped land, and to the north by residences, as shown on Figure 2. The Burlington Northern Santa Fe (BNSF) owned railway line is located south of the project site and runs east-west, relatively parallel to I-15.”



The site is located in an area where desert tortoises may occur, therefore it is essential that tortoise protocol surveys (USFWS 2019) be performed throughout the site. One of our members has been performing tortoise surveys in the region for 35 years. In the following map, red polygons depict sites where no tortoise sign was found and green polygons denote sites where tortoise sign has been found. Although no tortoise sign was found on the 40-acre site immediately west of the site, tortoise sign has been found within a mile of the site to the south.



Formal protocol surveys for Mojave desert tortoise (USFWS 2019) must be conducted at the proper times of year. Because USFWS (2009) and CDFW require only experienced biologists to perform protocol surveys, USFWS and CDFW biologists should review surveyors' credentials prior to initiating the surveys. If any tortoise sign is found, the project proponent should coordinate with USFWS and CDFW to determine whether "take" under the Federal Endangered Species Act (FESA) or California Endangered Species Act (CESA) is likely to occur from construction, use, and maintenance of the proposed project. If tortoises are present, the project proponent must obtain a Section 10(a)(1)(B) incidental take permit for private lands, a biological opinion under Section 7(a)(2) from the USFWS for activities on federal lands/actions, and in California, a Section 2081 incidental take permit from the CDFW prior to conducting any ground disturbance.

To determine the full extent of impacts to tortoises and to facilitate compliance with the FESA and CESA, authorized biologist(s) should consult with the USFWS to determine the action area for this project. The USFWS defines "action area" in the Code of Federal Regulations and their Desert Tortoise Field Manual (USFWS 2009) as "all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action (50 CFR §402.02)."

Other special status species that have been found on the sites included in the figure on the previous page are burrowing owl (*Athene cunicularia*; including the 40-acre parcel located immediately west), loggerhead shrike (*Lanius ludovicianus*; also on the western 40-acre parcel), American badger (*Taxidea taxus*), Mojave fringe-toed lizard (*Uma scoparia*), and larger creosote bush rings (Circle Mountain Biological Consultants, Inc. 1999, 2014a, 2014b).

The project proponent should fund focused surveys for all rare plant and animal species reported from the vicinity of the proposed project. Results of the surveys will determine appropriate permits from CDFW and USFWS and associated avoidance, minimization, and mitigation measures. Focused plant (CDFW 2018) and animal surveys should be conducted by knowledgeable biologists for respective taxa (e.g., rare plant surveys should be performed by botanists), and to assess the likelihood of occurrence for each rare species or resource (e.g., plant community) that has been reported from the immediate region. Focused plant surveys should occur only if there has been sufficient winter rainfall to promote germination of annual plants in the spring. Alternatively, the environmental documents may assess the likelihood of occurrence with a commitment by the proponents to perform subsequent focused plant surveys prior to ground disturbance, assuming conditions are favorable for germination.

Prior to conducting surveys, a knowledgeable biologist should perform a records search of the California Natural Diversity Data Base (CNDDDB; CDFW 2024b) for rare plant and animal species reported from the region. The results of the CNDDDB review would be reported in the DEIR with an indication of suitable and occupied habitats for all rare species reported from the region based on performing the species-specific surveys described below:

- CDFG (2010) lists hundreds of plant communities occurring in California, including those that are considered Communities of Highest Inventory Priority, or "CHIPs." Biologists completing surveys on behalf of the project proponent should document such communities where they occur and indicate how impacts to them will be minimized.

- If there are any loose, shifting sands within/near the impact areas of the panels, along the gen-tie lines, or access routes, focused surveys for Mojave fringe-toed lizards (*Uma scoparia*) should be performed (University of California, Riverside 2005, 2007).
- The County should ensure that all actions it authorizes are implemented in compliance with the Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and associated regulations, (e.g., Driscoll 2010, Pagel et al. 2010) to avoid mortality or injury to migratory birds and harassment of eagles.
- Surveys for burrowing owls should be conducted by persons with both knowledge and field experience in the biology, ecology, and behavior of burrowing owls and identifying burrowing owl sign. The County should also require implementing surveys at 30-, 60-, 90-, 120-, and 150-meter intervals in all suitable habitats adjacent to the subject property to collect data to help assess the potential indirect impacts of the project on this species (CDFG 2012). If burrowing owl sign is found, CDFG (2012) describes appropriate minimization and mitigation measures to offset these impacts.
- Mohave ground squirrel (MGS; *Xerospermophilus mohavensis*) is a threatened species under the CESA and has recently been petitioned for federal listing (Defenders of Wildlife *et al.* 2023). Since this project occurs within the range of the Mohave ground squirrel, the project proponent should conduct focal Mohave ground squirrel surveys (CDFW 2023) to determine presence/absence. Note that the results of these surveys are valid for only one year; if the site has not been brushed prior to March of the subsequent year, a new trapping effort is required. In the absence of a focal MGS survey, the proponent must assume presence and mitigate accordingly.

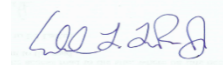
The NOP provides the following information relative to Stormwater Drainage Infrastructure Improvements: “The project’s on-site stormwater drainage system would consist of catch basins, underground storm drainpipes, an underground infiltration chambers, and bioswales/basins. The system is designed to collect, treat, and/or temporarily detain onsite stormwater runoff before discharging treated flows off-site. Specifically, “first flush” flows (i.e., typically the first surface runoff after a rainstorm, which contains the highest proportion of waterborne pollution) would be diverted into the underground infiltration chambers and the bio-swales/basins. The stormwater captured in the underground infiltration chambers would percolate through the soil thereby minimizing the volume of stormwater discharged off-site, while stormwater captured in the bio-swales would be discharged from the site gradually. Stormwater runoff captured after the first flush would be discharged off-site via proposed parkway drains that connect to the proposed storm drain system in Lenwood Road.”

The County should ensure that standing water and discharges associated with the proposed project do not provide a new water source for common ravens, which are a known predator of desert tortoises.

We appreciate this opportunity to provide the above comments and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Council wants to be identified as an Affected Interest for this and all other projects authorized by the County that may affect desert tortoises, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Please notify the Desert Tortoise Council at [eac@deserttortoise.org](mailto:eac@deserttortoise.org) of any proposed projects that County may authorize in the range of the Mojave desert tortoise so we may comment on them to ensure the County fully considers actions to conserve these tortoises as part of its directive to conserve biodiversity on private lands it manages.

Please respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this Project.

Respectfully,



Edward L. LaRue, Jr., M.S.  
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

cc. Brandy Wood, Region 6 – Desert Inland Region, California Department of Fish and Wildlife, [Brandy.Wood@wildlife.ca.gov](mailto:Brandy.Wood@wildlife.ca.gov)  
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